

IN SENATE OF THE UNITED STATES.

APRIL 3, 1848.

Submitted, and ordered to be printed.

Mr. WESTCOTT made the following

REPORT :

[To accompany bill H. R. No. 40.]

The Committee of Claims, to which was referred House bill, No. 40, entitled "An act for the relief of William Hogan, administrator of Michael Hogan, deceased," report:

That this case has been previously, at several past sessions, before the Senate.

Michael Hogan acted as agent for the Navy Department in Chili, South America, from November, 1820, to November, 1830. When he ceased to act as such agent, the treasury officers reported a balance against him of \$2,799 33. He claimed that this alleged balance was not due from him, and, on the contrary, that the United States owed him a large sum. He died in 1833, leaving his accounts with the government unsettled.

M. Hogan first applied to Congress, by petition to the Senate, in February, 1832, but the case was not decided at that session; Senate Journal, pp. 138, 257. After M. Hogan's decease, W. Hogan, his administrator, in December, 1833, presented his petition to the Senate, and a favorable report upon it, with a bill, was made; Senate Journal, pp. 54, 260; report No. —, bill No. 171. This bill allowed him upwards of \$20,000 of the credits he claimed, and charged him with \$3,425, not charged in his accounts when the balance was reported, of \$2,799 33, against him, leaving upwards of \$15,000 then due to him. In December, 1835, the case not having been decided at the previous session, it was again brought before the Senate, and the report before made was printed, and the same bill reported, and it passed the Senate. See report No. 27, and bill No. 31, and Senate Journal, pp. 45, 62, 73, 185, 187. The bill being sent to the House, was referred to, and reported back by, the Naval Committee with amendments, and, though considered in Committee of the Whole House, was not definitely acted on; House Journal, pp. 394, 457, 585, 1179. The amendments allowed him only \$763 10 for interest, and a credit, not specified, for costs, charges, and damages, and interest paid on the bills of exchange, and by striking out the sum of \$16,348 02 allowed him, and the charge against him, of \$3,425, for office rent.

In December, 1836, the claim was again presented to the Senate, and a favorable report and bill made, similar to the report and bill of 1834, (see bill No. 55,) *which again passed the Senate*; Senate Journal, pp. 52, 64, 139, 148. In the House the bill was referred and reported, with amendments, but no final decision had thereon before Congress adjourned; House Journal, pp. 251, 255, 503. The amendments were similar to those before proposed in the House.

In December, 1837, the case was again introduced into the Senate, and a bill reported like the former Senate bill, and, after discussion, was laid on the table; Senate Journal, pp. 45, 104, 370, 388; Senate bill No. 118.

In January, 1840, the case was again presented to the Senate, and bill, No. 261, reported, but not passed; Senate Journal, pp. 101, 230, 456, 458, &c.

Suit being, in the meantime, brought against W. Hogan, administrator, by the United States, in the federal circuit court for the southern district of New York, to recover the balance claimed against him, on the 8th of July, 1840, (see Senate Journal, p. 524,) the petition and papers were withdrawn to use by him at the trial. He filed a set-off in that suit, claiming the following items:

1. For commissions for drawing and negotiating, at Valparaiso, sundry bills of exchange on Navy Department, for use of public ships, $2\frac{1}{2}$ per cent. on \$619,798	\$15,494 95
2. For commissions for negotiating, with his endorsement, bills for \$34,122 80, drawn by pursers in navy on department, for use of public ships, at $2\frac{1}{2}$ per cent.	853 07
3. For interest on money borrowed and advanced for outfit of frigate Constellation, \$30,524; interest at 6 per cent. per annum, 5 months.....	763 10
4. For damages, costs, charges, interest, &c., on bills of exchange drawn by M. Hogan on Navy Department, and not accepted, but returned to and paid by him	3,142 28
5. For office rent due him, and unpaid by the United States	2,100 00
6. For amount due for bread provided for public service, and destroyed in public store by flood.....	4,548 02
7. For amount due for clerk hire while he was agent..	9,208 31
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	36,109 73
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He also claimed interest on set-off filed.

This suit resulted in a *verdict for defendant* on the 14th of May, 1845, and the jury gave a *certificate* that a balance of \$22,539 24 was due to him.

Mr. W. Hogan renewed his petition to Congress, but, in presenting his claim, he relied chiefly on the *certificate of the jury* of the balance due to him, more than on satisfactory testimony of the facts substantiating the items of his demand. Hence his petition to the Senate, January 5, 1847, (p. 82, Senate Journal,) was referred

to the Committee on the *Judiciary*, which, February 25, 1847, (p. 231, Senate Journal,) reported upon his case *adversely*, and proposed the following resolution:

“*Resolved*, That there is no law by which balances can be found in favor of defendants in suits brought by the United States; that the issuing of certificates for balances so found is an irregular practice and ought to be discontinued, and that Congress ought not to pass any act, for the relief of individuals, founded on such certificates, or suffer the same to be adduced as any evidence of the justice of a claim against the government.”

This resolution was not acted upon.

In March, 1846, the case was presented to the House of Representatives, by petition, claiming amount of certificate, but it was not decided; House Journal, 358, 489, 613.

In December, 1846, it was presented in proper form, with the evidence, to the House of Representatives, and reported upon. See report No. 89, and House bill 695; but it was not finally acted upon; House Journal, pp. 69, 499.

At this session he presented his petition to the House of Representatives, accompanied by proper proofs of the facts, in support of the justice of the different items of his claim, and a favorable report was made, January 11, 1848, by the Committee of Claims of the House of Representatives, (see report No. 47,) and a bill, allowing him \$16,831 87, which has passed the House and been referred to this committee. The committee have examined the report of the House committee carefully, and also all the accounts and documents, and the proofs filed with the petition in support of the claim, and which testimony, it is presumed, was not fully before the Judiciary Committee of the Senate, in 1847. The committee have not deemed it necessary to enter into an examination as to what items were allowed and what disallowed by the jury in their verdict and certificate. A conjectural statement, made by petitioner, is filed with the papers, by which, if correct, the amount allowed him, principal and interest of his demand, was \$26,439 43, deducting from which the principal and interest of the claimed treasury balance against him, being about \$3,900 19, leaves the amount of the certificate \$22,539 24. No weight or consideration whatever has been given by this committee to the certificate of the jury of that balance being due to Mr. Hogan. They were not sworn to try that question, and their certificate is *extra judicial* and gratuitous. This committee entirely agree with the doctrine of the resolution of the Judiciary Committee, reported in 1847, above quoted, on that subject. But the committee are satisfied that, laying that certificate aside, and from the testimony adduced to them in proof of the items of the demand, that the sum allowed in the House bill is equitably due to him, and ought to be paid. Hence the long argument or essay, in attempted refutation of the principle asserted in the resolution before mentioned, which a long portion of the petition is taken up with, and which argument is repeated in several different papers filed in the case, has been regarded as entirely inappropriate. The only effect it was calculated to have, was to cre-

ate a suspicion that it was presented, and strenuously insisted upon, because of an apprehension that there was some defect in the proofs filed in the case, which might be discovered, and occasion a necessity for falling back on the certificate to support the claim.

The committee are, however, gratified to find that the testimony adduced is sufficient to justify the allowance of so much of the claim as is allowed by the House bill, as, if it had not been, they would have been constrained to maintain the principle of the resolution referred to, and to have discarded the certificate as illegal; and they do not find, in the elaborate productions filed, assailing that principle, anything to induce the committee to doubt that it is the correct rule.

The committee do not deem it necessary to go into a detailed statement of all the facts in this case, and recite the particulars and specify the items allowed, or partly allowed, and those disallowed in whole or in part. It is sufficient to state that, from the \$36,109 73, claimed in the set-off filed, deducting the balance of \$2,799 33, certified by the treasury, leaving \$33,310 40, a farther deduction has been made of \$16,478 53, leaving the sum of \$16,831 87, the amount allowed in the House bill. The House committee, at the conclusion of their report, state the different items they deem it just to allow, making the same balance due the petitioner, which, although this committee do not arrive at by the same calculations, they can acquiesce in and conform to, by allowances estimated as to amount, by reasonableness, and yielded from considerations of an equitable nature, and dictates of liberal policy, rather than called for by fixed rules or strict law; and which allowances also include all claims for interest or remuneration for delay. Upon these principles this committee is satisfied that the amount specified in the House bill cannot be greatly erroneous either way, and they therefore report the bill back to the Senate, and recommend that it pass without amendment.